

FINAL BILL REPORT

ESSB 6034

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Synopsis as Enacted

Brief Description: Authorizing limited retail telecommunications services for public utility districts that provide only sewer, water, and telecommunications on the effective date of this act.

Sponsors: Senate Committee on Energy, Environment & Technology (originally sponsored by Senators Rolfes, Sheldon, Angel, Hunt, Chase, Kuderer and Hasegawa).

Senate Committee on Energy, Environment & Technology
House Committee on Technology & Economic Development
House Committee on Finance

Background: The powers of public utility districts (PUDs) and port districts are governed by statutes and a long history of court decisions. PUDs are expressly authorized, among other things, to provide electricity, water, and sewer service. They have additional incidental and implied authorities that are necessary for accomplishing their primary purposes.

PUDs and rural ports that were in existence on June 8, 2000, are authorized to acquire and operate telecommunications facilities for their own internal telecommunications needs and to provide wholesale telecommunications services within their district limits. PUDs are also allowed to provide wholesale services to other PUDs by contract.

Currently, the sections of statute authorizing districts to provide wholesale telecommunications services include the provision: "Nothing in this subsection shall be construed to authorize public utility districts [or rural port districts] to provide telecommunications services to end users." However, the term end user is not defined in the statute. In 2001, Attorney General Opinion No. 3 concluded that end user means retail customer, and that a PUD or rural port district may not use an interlocal agreement to sell or lease telecommunications facilities or services to other public agencies.

PUDs and rural port districts are required to ensure that their rates, terms, and conditions on wholesale services are not unduly or unreasonably discriminatory or preferential. Revenues from wholesale activities must be used to pay off the costs incurred in building and maintaining the telecommunications facilities.

Districts must charge themselves the true and full value of telecommunications services provided by their separate telecommunications functions to the district. PUDs and rural port

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districts may not exercise powers of eminent domain to acquire telecommunications facilities or contractual rights to such facilities.

The Utilities Transportation Commission (UTC) is authorized to review petitions brought by customers concerning a PUD's wholesale telecommunications rates, terms, and conditions.

Summary: A PUD that provides only water, sewer, and telecommunications services in a county with an area less than 500 square miles and west of Puget Sound, may provide, or contract for, end user Internet services on the PUD's broadband network. The authority to provide Internet service expires five years after the effective date of act for any PUD that has not been petitioned to provide Internet service or does not have financing for broadband deployment.

After receiving a petition requesting retail Internet services, the PUD commissioners may hold three meetings to verify petitioners' signatures; determine and submit findings regarding the existence or adequacy of retail Internet services; receive recommendations on business case plans; and by resolution, authorize the PUD to provide retail Internet services or connectivity.

The petition must declare that there are no or inadequate retail Internet service providers on the PUD's broadband network. The petition to request retail Internet services may be submitted by a majority of a group, including homeowners, within the PUD's geographical area, or an individual who has a partnership payment structure to finance broadband deployment with the PUD.

Adequate retail Internet service is determined by measuring retail Internet service in the area and comparing it to service standards in the PUD service level agreement used for all PUD district network providers. The service measurement must be quantified by measuring the service with speed and capacity devices and software. A retail Internet service provider may submit its own service assessment to the commissioners for consideration. The service assessment must be submitted within 30 days of the commissioners' first meeting on the petition requesting retail Internet services.

The commissioners may authorize a PUD to provide or contract for Internet services on the PUD's broadband network, as petitioned by the end users, when it has determined that service is inadequate or non-existent. Authorization to provide retail Internet service is dependent on the development of a business case plan.

The business case plan must be reviewed by a third party, which must include a review of the use of public funds in the provision of retail Internet service. Any revision to the business case plan made by the third party must be accepted or rejected by the PUD commissioners in an open meeting.

The commissioners must request an administrative law judge to hear Internet service adequacy disputes. The commissioners must provide written notice and may require disputing parties to attend the hearing. The administrative law judge must make and file a determination on the adequacy of retail Internet service with the commissioners. A company

regulated by the UTC may request resolution of internet service disputes through the UTC process for reviewing wholesale telecommunications.

A PUD must offer just, fair and reasonable rates for retail Internet service. A PUD may set tiers of charges based on user service demands but may not condition the availability or cost of other services upon the purchase or use of retail Internet service. A PUD authorized to provide retail Internet service within a specific area, must provide the proper facilities and connections to all persons and entities within the area, upon reasonable notice.

A PUD that is exempt from property tax is subject to an annual payment in lieu of taxes for broadband network property used for providing retail Internet services. The amount of the payment must be determined by the PUD that owns the property and the county in which the property is located and may not be more than the property tax that would be otherwise owed. The PUD and the county may enter into binding arbitration if they cannot agree on the amount of the payment in lieu of taxes.

The Department of Revenue must provide annual reports on payment in lieu of taxes and the amount of property taxes that would be owed on the broadband network used in providing retail Internet service.

Votes on Final Passage:

Senate	45	2	
House	94	4	(House amended)
Senate			(Senate refused to concur)
House	93	5	(House receded/amended)
Senate	46	2	(Senate concurred)

Effective: June 7, 2018